

UNAPPROVED
BOARD OF PHYSICAL THERAPY
REGULATORY ADVISORY PANEL – PROPOSED DRY NEEDLING REGULATIONS
MEETING MINUTES

The Virginia Board of Physical Therapy's Regulatory Advisory Panel on the Proposed Dry Needling Regulations met on Thursday, June 29, 2017 at the Department of Health Professions, 9960 Mayland Drive, Henrico, Virginia, 2nd Floor, Board Room #4.

PANEL MEMBERS PRESENT:

Melissa Wolff-Burke, PT, EdD, Board Member, Panel Chair
Allen R. Jones, Jr., PT, DPT, Board President
Sarah Schmidt, PTA, MPA, Board Member
Steve Lam, Former Board Member
Lisa D. Shoaf, PT, DPT
Erik Wijtmans, PT, MTC, CGIMS, CMTPT
Janet Borges, MSTCM, L.Ac.
Josh Bailey, PT, DPT

DHP STAFF PRESENT:

Corie E. Tillman Wolf, Executive Director
Elaine Yeatts, Senior Policy Analyst
Erin Barrett, Assistant Attorney General, Board Counsel
Laura Mueller, Program Manager, Board of Physical Therapy
Asia Pham, Intern

GUESTS PRESENT:

Arthur Yin Fan, MD, L.Ac., American Traditional Chinese Medicine Association
Michelle Lau, L.Ac., O.M.D., Council of Acupuncture and Oriental Medicine Associations; America Alliance of Acupuncture
Steve Chang, L.Ac., New York Acupuncture Association
Yan Fan, L.Ac., Richmond Acupuncture Care
Richard Grossman, VPTA
Matthew Stanley, ASVA
Robert A. Hoffman, ASVA
Tracey Adler, OPT, Inc.; Board member
Doufeng Piao, Chinese Acupuncture Alliance of Georgia
Garry Guan, Chinese Acupuncture Alliance of Georgia
Qiao, Yusheng, Georgia Acupuncture
George Fan Xu, Georgia Acupuncturist

CALL TO ORDER:

The Regulatory Advisory Panel (RAP) meeting was called to order at 2:01 p.m.

Dr. Wolff-Burke, Panel Chair, asked Panel and staff members to introduce themselves.

Dr. Wolff-Burke provided reminders regarding meeting materials on laptops for panel members and speaking directly into the microphones.

Ms. Tillman Wolf read the Emergency Egress Procedures.

AGENDA:

Dr. Wolff-Burke asked whether there were any proposed changes to the ordering of the agenda. With no proposed changes, the meeting proceeded.

PUBLIC COMMENT:

Robert A. Hoffman, L.Ac., an acupuncturist for 23 years, commented that acupuncture is not the same as a dry needling physical therapy technique. He further commented that physical therapists should refer patients to acupuncturists for treatment.

Michelle Lau, L.Ac., from the Council of Acupuncture and Oriental Medicine Associations and the America Alliance of Acupuncture in California, commented that dry needling is part of acupuncture. Profound education is needed; in California, 3,000 hours of training is required for acupuncture to protect public safety. Trigger point needle treatments are part of acupuncture.

Arthur Fan, M.D., L.Ac., from the American Traditional Chinese Medicine Association, commented that the trigger point needling taught by Janet Travell is acupuncture and that dry needling falls under acupuncture in China. Physical therapists should not do acupuncture; the hours of training should match the hours required for an MD acupuncturist. The practice of dry needling by physical therapists misleads public.

Matthew Stanley, representing the Acupuncture Society of Virginia, commented that he is disappointed with the process and composition of the panel with no medical doctor, and the lack of collaboration with acupuncturists. He asked the panel members to consider the perspectives of the licensed acupuncturist on the panel and to give weight to those perspectives. He stated that the use of the term “complete” in the final paragraph of the current Guidance Document on dry needling acknowledges that dry needling is part of a complete acupuncture treatment. He stated that the training requirements including the training hours, need for clinical supervision, and prohibition of delegation are seriously lacking from the Board’s proposed regulations. He asked the Board to consider an approval process for dry needling practitioners, a requirement for a certification process for acupuncture needle use.

Garry Guan, an acupuncture patient from Georgia, stated that he has studied the 3,000-year history of acupuncture in China. He has been a recipient of acupuncture, but he does not practice acupuncture. He stated that the issue is the safety of the public/patient.

Doufeng Piao, of the Chinese Acupuncture Alliance of Georgia (CAAG), an acupuncturist, commented that dry needling is acupuncture and a surgical procedure. Physical therapy is insufficient training for acupuncture; acupuncture licensure requires 2,000 hours of training.

CHARGE OF THE RAP:

Dr. Wolff-Burke provided members with an overview of the charge of the Regulatory Advisory Panel (RAP), which was convened pursuant to 18VAC112-11-70 of the Board’s Regulations related to Public

Participation. Dr. Wolff-Burke stated that the RAP has been composed to provide professional specialization and technical assistance to the Board to address a specific regulatory issue – the Board’s proposed regulations regarding the practice of dry needling and the public comment that has been received in response to those proposed regulations. The RAP is charged with making recommendations to the full Board regarding whether the public comments received prompt any proposed changes to the current proposed regulations.

Dr. Wolff-Burke stated that the RAP’s first matter of business will be to discuss the public comment that was received regarding the proposed regulations, followed by a discussion of some of additional/updated materials on the regulation of dry needling, and then finally discuss the current proposed language.

DISCUSSION:

Review of Public Comment

Ms. Yeatts provided panel members with an overview of the public comment received in response to the Board’s proposed regulations. A summary of the public comments received was provided to panel members.

Ms. Yeatts stated that many comments related to the practice of dry needling relate to scope of practice, but that the Board of Physical Therapy has made the determination that dry needling is within the scope of practice for physical therapists and that it can regulate the practice of dry needling. Ms. Yeatts stated that some issues or concerns identified in the comments included the lack of language related to (1) specifics on training requirements, including the number of training hours, clinical experiences, and additional practice; (2) continuing education; (3) delegation of the practice to PTA’s or support personnel; (4) medical referral, which is in the *Code*; and (5) informed consent.

Review of Additional/Updated Materials on the Regulation of Dry Needling

Ms. Tillman Wolf provided panel members with an overview of the additional materials provided in the agenda packets, including the December 2016 paper from the FSBPT and the major points made, including updates made since the Board’s proposed regulations were drafted. A number of states have adopted, or are in the process of adopting, regulations related to dry needling. A number of states, including New Jersey and Oregon, have had recent advisory or attorney general opinions that dry needling is not within the scope of practice for physical therapists in their states. Copies of opinions from New Jersey and Oregon provided by Ms. Borges were provided to panel members. Approximately 34 states permit dry needling as part of the practice of physical therapy.

Ms. Yeatts provided an overview of what other states are doing with regard to their regulations for dry needling. Regulations from other states include reference to a number of items, including whether the Board approves dry needling courses, whether dry needling is considered a modality within the practice of dry needling or a separate practice to be certified, whether courses are to be taken face-to-face, whether a practitioner is required to be licensed for a minimum period of time prior to practicing dry needling, and whether the practice of dry needling can be delegated to others by a PT.

Review of Current Proposed Language

Ms. Yeatts stated that the panel members can make recommendations to the Board of whether there should or should not be additional requirements for dry needling or changes made to the proposed regulations.

At this time, Dr. Wolff-Burke asked Board members to re-introduce themselves, and to state their qualifications and their background with dry needling.

Dr. Wolff-Burke identified the primary areas of discussion by the panelists as:

1. Number of training hours; clinical and didactic hours
2. Face to face hours; What counts in didactic education?
3. Course approval – who approves/oversees? Qualifications of instructors?
4. Years of Practice
5. Informed Consent
6. Delegation
7. Definition of dry needling

Panel members then considered and discussed the current proposed regulation language.

Proposed Paragraph A

Panel members discussed whether there should be a definition of “dry needling” included in the proposed regulation and the current definitions that exist from the APTA and the HumRRO report.

A **MOTION** was made by Janet Borges, properly seconded by Sarah Schmidt, that the recommendation be made to the full Board that a definition of dry needling be included in the current proposed draft of dry needling regulations.

Panel members discussed the motion. Panel members discussed whether a definition is necessary for public protection/information, or whether the inclusion of a definition may create an inadvertent issue if there is either an omission or a definition that could become obsolete. Panel members discussed whether any definition would include a limitation of the practice to say dry needling “does not include stimulation of distal or auricular points.” Panel members further discussed that even absent an explicit definition, the Board can define what is or is not within the definition of dry needling. Ultimately, the Board can make the determination of whether or not to include a definition. Panel members made no amendments to the original motion.

Panel members voted on the motion 4 Yea (Wolff-Burke, Schmidt, Borges, Lam); 4 Nay (Jones, Shoaf, Wijtmans, Bailey); the motion failed.

Panel members then discussed whether there should be any changes to the current paragraph A.

A **MOTION** was made by Dr. Lisa Shoaf, properly seconded by Dr. Josh Bailey, that paragraph A should remain as written, with the caveat that, if the Board decides to add a definition of dry needling, it should be included in paragraph A. The motion passed unanimously (8-0).

Dr. Wolff-Burke called for a break at 3:35 p.m.

The panel reconvened at 3:46 p.m.

Proposed Paragraph C

Panel members discussed whether there should be any recommended changes to the current paragraph C.

A **MOTION** was made by Dr. Shoaf, properly seconded by Ms. Schmidt, that paragraph C should be left as is.

Panel members discussed the motion and the current language related to informed consent and the language “and shall clearly state that the patient is not receiving an acupuncture treatment” as potentially confusion or unnecessary. Ms. Yeatts provided a history of the inclusion of the language to imply that if a patient wanted a more holistic treatment, the patient may want an acupuncturist rather than having a limited dry needling treatment from a physical therapist.

Ms. Borges stated that acupuncturists do not need a physician referral for them to perform acupuncture treatments; they get an informed consent form signed by patient and then refer patients to doctors for other issues.

An **AMENDED MOTION** was made by Dr. Shoaf, properly seconded by Erik Wijtmans, to recommend striking “and shall clearly state that the patient is not receiving an acupuncture treatment” from paragraph C.

Panel members discussed the amended motion. The amended motion passed by a vote of 7-1 (Nay - A. Jones).

A **MOTION** was made by Mr. Wijtmans, properly seconded by Ms. Schmidt, to accept the current Paragraph C with the amendment as made in the previous amended motion with no further changes. The motion passed by a vote of 7-1 (Nay - A. Jones).

Addition of Proposed Paragraph D

Panel members discussed whether to recommend the addition of paragraph D regarding the delegation of dry needling to PTAs or support staff.

A **MOTION** was made by Ms. Schmidt, properly seconded by Dr. Shoaf, to recommend the addition of language as paragraph D, “D. Dry needling may only be performed by a licensed physical therapist and may not be delegated to a physical therapist assistant or other support personnel.”

Panel members discussed the motion. The motion passed unanimously (8-0).

Proposed Paragraph B

Panel members discussed the current language related to training in proposed paragraph B, and whether to include clarification regarding the requirement for face-to-face training. Ms. Yeatts explained that, in the current proposed language, the Board steered away from dictating the exact number of hours for training based upon wide variances in the training that was available at the time.

A **MOTION** was made by Dr. Shoaf, properly seconded by Ms. Schmidt, to add to the end of paragraph B, “The training shall include didactic and laboratory education and the hands-on laboratory training must be face-to-face.”

Panel members discussed the motion and whether there should be a set standard for training hours and content due to the variety of education and trainings that exist. Panel members further discussed that the accrediting body for educational programs looks at the content and outcomes rather than specific hours of training for specific items.

The motion passed unanimously (8-0).

Panel members further discussed course approval.

A **MOTION** was made by Ms. Schmidt, properly seconded by Dr. Shoaf, to add to paragraph B: “The training shall be in a course certified by FSBPT or approved or provided by a sponsor in 18VAC112-20-131(B).”

The motion passed by a vote of 7-1 (nay - J. Borges). Ms. Borges noted that she is not familiar with content of courses, not convinced they are uniform or assure competency of skills.

Panel members discussed how competency is tested, and that this is an area for further discussion by the Board. Panel members discussed years of practice, and whether years of practice dictate the ability of a practitioner to safely practice dry needling. No motion was made by panel members on this issue.

Panel members received clarification from Board counsel that there could be no “grandfather” clause for current practitioners, as the Board would need to issue a credential or certification in order to “grandfather” in current practitioners.

Panel members discussed whether the regulations should include a specific number of required hours of training. Panel members discussed that the focus should be on post-licensure training, that academic training should not count toward whatever hours would be required for dry needling training. If dry needling is “not an entry-level skill,” then the required training should be post-licensure. The post-licensure training is the remaining 14% or 1/5 of training needed for competency in dry needling, as the 4-5,000 hours of education constitutes 86% of what training/education/information is needed for competency.

Panel members discussed whether there should be a focus on competency testing and what is in the training content, rather than assigning an arbitrary number of required hours.

Ms. Yeatts stated that, if the Board considers assigning hours, it probably should not be less than the 54 hours in the guidance document; the training shall be adequate enough to ensure minimum competence of practitioner to practice dry needling.

Ms. Borges recommended that the Board and panel members review the analysis and FAQ’s developed in Maryland to support how they determined training hours and the reasoning for their decision. Ms. Borges will forward this document to Ms. Tillman Wolf for distribution to the panel and Board members.

Panel members discussed that the issue for the Board is whether to attach a number of required hours, or to adopt a measure for competency level, or both.

Panel members then discussed next steps and whether there should be an additional meeting of the RAP. There was a consensus among panel members that there should be some way of identifying competent training.

Dr. Jones proposed that staff research current trainings and certification programs to determine whether there are any best practices, and that the panel member experts can identify the training programs that are considered to be good training and forward that information to Board staff. The Board can then review the information and hours issue.

A **MOTION** was made by Dr. Shoaf, properly seconded by Dr. Jones, that the RAP's recommendations be forwarded to the Board for review/revision and/or final adoption of regulations, with additional information as provided by RAP members and Board staff to be provided to and considered by the Board.

Panel members discussed the motion. The motion passed by a vote of 5-3 (nay: Wolff-Burke, Schmidt, Borges). Ms. Borges noted a continuing objection that stakeholders are not at the table that need to be and that the RAP is the primary arena for discussion.

NEXT STEPS:

The recommendations of the RAP will be presented to the full Board at the next meeting scheduled for August 22, 2017.

ADJOURNMENT:

The RAP meeting was adjourned at 5:21 p.m.

Melissa Wolff-Burke, PT, EdD, Chair

Corie Tillman Wolf, J.D., Executive Director

Date

Date